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16 Attorneys for Defendant

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON AT YAKIMA

15 SYLVIA KELLER, DEBBIE SILLS, and
16 SANDY GAYTAN, on behalf of
17 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

20 VIRGINIA MASON MEDICAL CENTER,
21 a Washington non-profit corporation doing
22 business as Virginia Mason Memorial,

23 Defendant.

No. _____

NOTICE OF REMOVAL

[Clerk's Action Required]

NOTICE OF REMOVAL - 1

(No.: _____)

4829-5151-2501v.2 0107595-000032

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1 TO: United States District Court for the Eastern District of Washington at
2 Yakima

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441,
4 and 1446, Defendant Yakima Valley Memorial Hospital Association d/b/a
5 Virginia Mason Memorial (“Defendant” or “Memorial”)¹ hereby removes this
6 action from the Superior Court of the State of Washington, Yakima County
7 (“Yakima County Superior Court”) to the United States District Court for the
8 Eastern District of Washington at Yakima.
9

10 In support of this notice, Defendant states as follows:

11 1. On January 15, 2020, Plaintiffs Sylvia Keller, Debbie Sills, and
12 Sandy Gaytan (“Plaintiffs”) filed a putative Class Action Complaint in Yakima
13 County Superior Court, cause number 20-2-00170-39.
14

15 2. On January 27, 2020, Plaintiffs completed service of the Summons
16 and Complaint on Virginia Mason Medical Center—which is not the correct
17 corporate entity defendant in this action. A true and correct copy of Plaintiffs’
18 Declaration of Service and Summons and Complaint are attached as **Exhibit A**.
19
20
21

22 ¹ Plaintiffs’ pleadings erroneously identify Virginia Mason Medical Center as the
23 defendant in this lawsuit. By filing this Notice of Removal and associated papers, Memorial does not waive (and explicitly reserves) the right to assert any defenses regarding Plaintiffs’ failure to name the correct defendant.

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I. DEFENDANT MEMORIAL HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

3. The Complaint asserts putative class claims for alleged wage and hour violations. This Notice of Removal is timely as it is being filed within 30 days of service of Plaintiffs' Class Action Complaint, regardless of the fact that Plaintiffs served and named the incorrect defendant.

4. Defendant has not yet filed an Answer, but will respond in compliance with the deadline set forth in Fed. R. Civ. P 81(c)(2).

5. Venue is proper in the Eastern District of Washington at Yakima because the claim arose in Yakima County, Washington. *See* 28 U.S.C. § 1441(a).

6. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendant are being concurrently filed today, along with all process, pleadings, and orders filed in the state court action.

7. Notice of this removal will be given to Plaintiffs and the Superior Court pursuant to 28 U.S.C. § 1446(d).

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS FEDERAL QUESTION JURISDICTION

8. Removal is proper based on federal question jurisdiction arising under 28 U.S.C §1331, even though Plaintiffs' Complaint styles its claims as arising under state law.

1 9. “Under the well-pleaded complaint rule, a district court has federal
2 question jurisdiction if ‘a federal question is presented on the face of the
3 plaintiffs’ properly pleaded complaint.’” *DeSantiago v. Laborers Int’l Union,*
4 *Local No. 1140*, 914 F.2d 125, 127 (8th Cir. 1990) (quoting *Caterpillar Inc. v.*
5 *Williams*, 482 U.S. 386, 392 (1987)); *see also People of the State of California v.*
6 *Dynegy*, 375 F.3d 831, 838 (9th Cir. 2004) (same).

8 10. The doctrine of complete preemption is recognized as an exception
9 to the “well-pleaded complaint rule.” *Beneficial Natl Bank v. Anderson*, 539 U.S.
10 1, 8 (2003) (“*Beneficial*”). “The Supreme Court has concluded that the
11 preemptive force of some statutes is so strong that they ‘completely preempt’ an
12 area of state law.” *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d
13 1102, 1107 (9th Cir. 2000) (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S.
14 58, 65 (1987)). “In such instances, any claim purportedly based on that
15 preempted state law is considered, from its inception, a federal claim, and
16 therefore arises under federal law.” *Id.*; *see also Beneficial*, 539 U.S. at 8 (“When
17 the federal statute completely pre-empts the state-law cause of action, a claim
18 which comes within the scope of that cause of action, even if pleaded in terms of
19 state law, is in reality based on federal law”).

22 11. The interpretation and enforcement of Collective Bargaining
23 Agreements (“CBAs”) require scrutiny under federal law. Section 301 of the

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1 Labor Management Relations Act (“LMRA”) compels that “suits for violation of
 2 contract between an employer and a labor organization representing employees
 3 ... may be brought in any district court of the United States having jurisdiction of
 4 the parties, without respect to the amount in controversy or without regard to the
 5 citizenship of the parties.” 29 U.S.C. § 185(a). Because federal law governs
 6 actions concerning the interpretation and enforcement of CBAs, the Supreme
 7 Court has found that *Section 301 “completely preempts” all state law claims that*
 8 *are based upon or require interpretation of a CBA.* *Allis-Chalmers Corp. v.*
 9 *Lueck*, 471 U.S. 202, 220 (1985) (emphasis added); *Avco Corp. v. Aero Lodge*
 10 *No. 735, Int’l Ass’n of Machinists & Aerospace Workers*, 390 U.S. 557, 560
 11 (1968); *Local 174, Teamsters, etc. v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962);
 12 *Beals v. Kiewit Pac. Co.*, 114 F.3d 892, 894 (9th Cir. 1997); *Lopez v. Cont’l Can*
 13 *Co.*, 961 F.2d 147, 148-49 (9th Cir. 1992). This is so even where the complaint
 14 disclaims any reliance on a CBA. If the claim arises out of a CBA, the complaint
 15 must be recharacterized as a Section 301 suit. *See Olguin v. Inspiration*
 16 *Consolidated Copper Co.*, 740 F.2d 1468, 1472 (9th Cir. 1984). Thus, “[a] claim
 17 pleaded under state law that requires the interpretation of a [CBA] is transformed
 18 by § 301 of the LMRA into a claim arising under federal law.” *Rissetto v*
 19 *Plumbers & Steamfitters Local 343*, 94 F.3d 597, 599 (9th Cir. 1996); *see also*
 20 *Schuver v. Midamerican Energy Co.*, 154 F.3d 795, 798-99 (8th Cir. 1998)

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(affirming denial of motion to remand when defendant asserted federal question jurisdiction under Section 301); *Vera v. Saks & Co.*, 335 F.3d 109, 114 (2nd Cir. 2003) (affirming removal because “unusual pre-emptive power” accorded under section 301 extends to create federal jurisdiction even when the plaintiff’s complaint makes no reference to federal law and appears to plead an adequate state claim) (internal quotations omitted).

12. Here, Plaintiffs allege in Count 1 that Memorial violated the Washington Minimum Wage Act, chapter 49.46 RCW, by failing to pay wages owed, including overtime, for time spent donning and doffing surgical attire. Compl. ¶¶ 6.6-6.10. At minimum, Plaintiffs seek relief in the form of alleged back wages and overtime, less any amount Memorial already paid the employees, interest, and attorneys’ fees, along with declaratory and injunctive relief. *Id.* ¶¶ 6.4, 6.10; *see also* RCW 49.46.090.

13. Plaintiffs allege in Count 2 that Memorial’s alleged improper withholding of wages also violated the Wage Rebate Act, chapter 49.52 RCW. *Id.* ¶¶ 7.1-7.6. Plaintiffs seek relief for this claim in the form of alleged double damages, costs, and attorneys’ fees. *Id.* ¶ 7.6.

14. All three Plaintiffs in this action work in positions that are covered by Collective Bargaining Agreements between Memorial and Service Employees International Union Healthcare 1199NW (“SEIU 1199”). Accordingly, all three

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1 Plaintiffs are represented by a labor union. Various CBAs govern the terms and
2 conditions of each Plaintiff's employment including, without limitation, the
3 instant claims for alleged wage violations and Plaintiffs' ability to recover
4 damages in this lawsuit. SEIU 1199 is the exclusive collective bargaining
5 representative for all registered nurses at Memorial. SEIU 1199 is also the
6 exclusive collective bargaining representative for all full-time, part-time, per
7 diem, occasional, and available service unit employees at Memorial. Plaintiffs
8 Sylvia Keller and Sandy Gaytan are members of the nurse bargaining unit, and
9 Plaintiff Debbie Sills is a member of the service employee bargaining unit. A
10 true and correct copy of the nurses' CBA in effect at all times relevant to this
11 proceeding is attached hereto as **Exhibit B**. A true and correct copy of the
12 service employees' CBA in effect at all times relevant to this proceeding is
13 attached hereto as **Exhibit C**.

16 15. Both CBAs contain numerous, detailed provisions pertaining to
17 wages, premium pay, shift differentials, hours of work, shift lengths, and hours
18 compensated. *See, e.g.,* Nurses' CBA Articles 6, 7, and 8 *and* Service CBA
19 Articles 5, 6, and 7. The CBAs also provide for overtime in excess of what state
20 law requires. *Compare, e.g.,* Nurses' CBA Article 6.9 (allowing for daily
21 overtime) *with* RCW 49.46.130 (requiring overtime only after 40 hours in the
22 workweek).

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1 16. Further, past practices, such as donning and doffing surgical attire
 2 and Memorial's policy of rounding all hours worked to the nearest 15 minutes,
 3 *see* Compl. ¶ 5.4, are incorporated into the CBAs as implied terms. These
 4 implied terms bear on Plaintiffs' claims. *See, e.g., Hawaii Teamsters and Allied*
 5 *Workers Union, Local 996 v. United Parcel Serv.*, 241 F.3d 1177, 1181 (9th Cir.
 6 2001) ("the 'industrial common law' ... 'is equally a part of the collective
 7 bargaining agreement although not expressed in it.'") (citations omitted); *Nat'l*
 8 *Metalcrafters, Div. of Keystone Consol. Indus. v. McNeil*, 784 F.2d 817, 824 (7th
 9 Cir. 1986) (dispute over CBA's interpretation existed where parties filled gaps in
 10 CBA with implied terms); *see also Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*,
 11 491 U.S. 299, 311-12 (1989) (explaining that implied provisions and past
 12 practices become part of a CBA).

13 17. As the foregoing demonstrates, Plaintiffs' state wage claims cannot
 14 be resolved without an in-depth examination and interpretation of the governing
 15 CBA terms (express and implied) and the past practices between Memorial and
 16 SEIU 1199. For instance, the CBAs do not specifically contemplate donning or
 17 doffing. Thus, to determine whether Memorial properly paid Plaintiffs for time
 18 spent donning and doffing surgical attire, which the Court must do to determine
 19 whether Plaintiffs (and potentially class members) are owed damages, the Court
 20 will have to scrutinize each CBA and the parties' past practices and bargaining

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1 histories to determine whether “work” as that term is used in the labor agreement
2 includes donning and doffing activity. If so, it must then interpret the complex
3 compensation and overtime provisions in the CBAs along with Memorial’s
4 rounding practices (another implied term in the CBAs) to determine whether
5 Memorial properly paid Plaintiffs and/or whether additional compensation, if any,
6 is owed.

8 18. Additionally, both CBAs implicated by Plaintiffs afford more
9 overtime than what state law requires. Thus, to a significant extent, Plaintiffs’
10 claims for unpaid wages arise out of the CBAs, not state law, also triggering
11 Section 301 preemption. *See, e.g., Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053,
12 1066 (9th Cir. 2007); *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
13 1032-33 (9th Cir. 2016); *Curry*, 2012 WL 104627 at *6; *Gonzalez v. Farmington*
14 *Foods, Inc.*, 296 F. Supp. 2d 912, 935 (N.D. Ill. 2003). For this additional reason,
15 Plaintiffs’ claims for unpaid wages are inextricably intertwined with and
16 substantially dependent upon the CBAs.

18 19. Of course, the question of whether Memorial “willfully” withheld
19 wages (for purposes of alleged double damages) by conducting itself in
20 accordance with bargained-for terms and conditions of work also cannot be
21 resolved without interpreting and applying the CBAs, the parties’ past practices,
22 and implied contract terms. *See, e.g. Compl.* ¶¶ 7.3, 7.6.

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20. District courts regularly assert jurisdiction over alleged state wage and hour claims based on the preemptive power of Section 301. *See, e.g., Vera*, 335 F.3d at 114 (removing state claims for wage deduction violations); *Curry v. Kraft Foods Global, Inc.*, 2012 WL 104627, *5-6 (N.D. Ill., 2012) (removing state claims for unpaid wages for donning and doffing activities); *Clee v. MVM, Inc.*, 91 F. Supp. 3d 54, 62-64 (D. Mass. 2015) (removing state wage claims for pre-shift and post-shift work); *Santiago v. Aramark Uniform and Career Apparel, LLC*, No. C 12-04462 JSW, 2012 WL 5868954, * 4 (N.D. Cal., 2012) (removing state wage claims). *Cf. Firestone v. Southern California Gas Co.*, 219 F.3d 1063, 1066 (9th Cir. 2000) (state wage and hour claims preempted under Section 301); *Barton v. House of Raeford Farms, Inc.*, 745 F.3d 95, 109 (4th Cir. 2014) (state claims for wages owed for donning and doffing protective gear preempted by Section 301). This case is no different.

21. Indeed, Plaintiffs ***agree*** that interpretation of the relevant CBAs and past practices is required, notwithstanding Plaintiffs' efforts to plead around Section 301 in their Complaint.

22. The Nurses' CBA and the Services' CBA both contain comprehensive grievance and arbitration procedures. *See* Nurses' CBA Article 17 and Service CBA Article 16. These procedures are the sole and exclusive remedy for alleged contract violations. *See, e.g., DelCostello v. Int'l*

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1 *Broth. of Teamsters*, 462 U.S. 151, 163 (1983); *Clayton v. Int’l Union, United*
 2 *Auto., Aerospace, & Agr. Implement Workers of Am.*, 451 U.S. 679, 681 (1981);
 3 *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-653 (1965) (same);
 4 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 987-89 (9th Cir. 2017).

5
 6 23. On January 18, 2018, Plaintiff Sylvia Keller filed a grievance on
 7 behalf of “RNs in Surgical Services and similar positions,” alleging that
 8 Memorial violated the CBA by not paying nurses for all “hours worked.” A true
 9 and correct copy of the grievance is attached as **Exhibit D**.

10 24. On April 9, 2019, Memorial and SEIU 1199 executed a settlement
 11 agreement, resolving the grievance prospectively. A true and correct copy of the
 12 settlement agreement is attached as **Exhibit E**. SEIU 1199 submitted the
 13 question of retrospective liability to binding arbitration. A true and correct copy
 14 of the arbitral award, issued in Memorial’s favor, is attached as **Exhibit F**.

15 25. SEIU 1199’s principal contention in the grievance and arbitration
 16 was virtually identical to the claims Plaintiffs assert here, *i.e.*, that Memorial
 17 improperly withheld wages for time spent donning and doffing surgical attire at
 18 the beginning and end of shifts. *See* Ex. F at 4-5. SEIU 1199 also sought
 19 substantially identical relief as Plaintiffs in this case: back pay and overtime, for
 20 both nurses and service employees. *Id.* at 5.
 21
 22
 23

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1 Complaint includes such claims, this Court has supplemental jurisdiction to hear
2 and decide all claims asserted by Plaintiffs in their Complaint.

3 24. This Notice of Removal is filed subject to and with full reservation
4 of rights. No admission of fact, law, or liability is intended by this Notice of
5 Removal and all defenses, motions, and pleas are expressly reserved.
6

7
8 WHEREFORE, Defendant Memorial hereby removes the above-entitled
9 action and respectfully gives notice that the action is removed from the Yakima
10 County Superior Court to the United States District Court for the Eastern District
11 of Washington at Yakima.
12

13
14 DATED this 26th day of February, 2020.

15
16 Davis Wright Tremaine LLP
Attorneys for Defendant Memorial

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CERTIFICATE OF SERVICE

I hereby certify that on this day I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 26th day of February, 2020.



Susan Bright

NOTICE OF REMOVAL - 15
(No.: _____)
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